

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	§	
<b>Richard E. Waitkus, Jr.</b>	§	Group Art No. <b>2857</b>
	§	
Serial No.: <b>10/774,240</b>	§	
	§	Examiner: <b>Tung S. Lau</b>
Filed: <b>February 6, 2004</b>	§	
	§	
For: <b>Systems and Methods for Material</b>	§	
<b>Management</b>	§	Atty Docket No.: <b>016093.0118</b>

MAIL STOP AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

The following Pre- Appeal Brief Request for Review (“Request”) is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005 (“OG Notice”). Pursuant to the OG Notice, this Request is being filed concurrently with a Notice of Appeal. The Applicant respectfully requests reconsideration of the Application in light of the remarks set forth below.

## **REMARKS**

In the prosecution of the present Application, the Examiner's rejections and assertions contain clear errors of law, including a failure to establish *prima facie* rejections in a Final Office Action. To assist the Panel in the review of this Request, Applicant submits the following brief summary of selected portions of the prosecution history of the Application.

### **I. Brief Summary of Selected Portions of Prosecution History**

#### **a. Final Office Action**

In a Final Office Action of February 27, 2007 (the Final Office Action), claims 1, 15, 24, 3, 4, 5, 8, 11, 14, 16, 25, 17, 18, 26, 19, 21, 28, 29, 30, 32 and 31 were rejected under 35 U.S.C. § 102, but as described in further details below, the Final Office Action failed to set forth a *prima facie* rejection of several of the claims.

Accordingly, Applicant filed a Response to the Final Office Action on December 16, 2005 (the Response to Final Office Action). In this response the Applicant pointed out that the Final Office Action did not establish a *prima facie* rejection of the claim under 35 U.S.C. § 102, and requested that the claims be allowed. *See* Response to Final Office Action, pages 10-15.

### **II. Errors of Record**

#### **a. Failure to Establish a Prima Facie Rejection**

Applicant maintains that the Final Office Action did not establish a *prima facie* rejection of claims 1, 15, 24, 3, 4, 5, 8, 11, 14, 16, 25, 17, 18, 26, 19, 21, 28, 29, 30, 32 and 31 in the application and that the Advisory Action did not address the deficiencies pointed out by the Applicant in the Response to the Final Office Action.

The Office Action states:

Claims 1, 15, 24, 3, 4, 5, 8, 11, 14, 16, 25, 17, 18, 26, 19, 21, 28, 29, 30, 32 and 31 are rejected under 35 U.S.C. 102(a) as being anticipated by Nadir (U.S. Patent Application Publication 2002/0077875).

#### **Regarding claim 1:**

Nadir discloses a material management system including: one or more waste containers adapted to receive and compact waste (abstract); a fullness-measuring subsystem for determining the fullness of one or more waste containers (fig. 1, page 1, section 0007); a computerized scheduling subsystem in communication with the fullness-measuring subsystem for automatically

determining an optimal time to empty each waste container (fig. 1, page 3, section 0028-0036), based the fullness of the waste container (fig. 1, truck with waste container) and scheduling factors (page 3, section 0028-0030) including customer preferences (page 2, section 0034, no customers want the waste container overflow) and waste hauler limitations (page 2, section 0022), and where the computerized scheduling subsystem (fig. 1, unit computer) stores at least one scheduling factor before determining the optimal time to empty each waste container (page 3, section 0030).

Office Action, pages 8-9.

Applicant disagrees. Claim 1 requires, in part, “a computerized scheduling subsystem . . . for automatically **determining an optimal time to empty each waste container, based on the fullnesses of the waste container and scheduling factors including customer preferences and waste hauler limitations, and where the computerized scheduling subsystem stores at least one scheduling factor before determining the optimal time to empty each waste container.**” Nadir does not show these limitations.

First, The Office action states that the limitation of “**determining an optimal time to empty waste container, based on the fullness of the waste container**” is disclosed by a figure of a “truck with waste container” in Fig.1 of Nadir. Applicant cannot understand how this figures show a step of “determining” anything, and certainly does not disclose determining an optimal time to empty the waste container, based on the fullness of the waste container.

Second, The Office action states that the scheduling factors of customers preferences are shown by Nadir at “page 2, section 0034, no customers want the waste container to overflow.” Paragraph 0034 of Nadir states:

Compactors are always ready to accept waste and won't overflow. The compactor are never overweight. Compactor maintenance is enhanced due to operational data communication with the central location. It is easy to combine the present invention with any kind of compactor, requiring only minor changes.

Nadir, paragraph 0034.

This does not disclose “determining an optimal time to empty a waste container, based on . . . customer preferences.” The paragraph does not enumerate any customer preferences, nor does it show determining an optimal time to empty a waste container based on customer preferences. The Office action states that “no customers want the waste container to overflow,” but this is not disclosed in the cited portion of Nadir. Furthermore, the statement that “no customers want the waste container to overflow,” misses the point of customer preferences as discussed in this application. Some customers may prefer that their waste container always be full before they are emptied, while other customers may prefer that their waste containers always be emptied before they are full. In any case, the cited portion of Nadir does not disclose the use of any customer preference in the determination of when to empty a waste container.

Second, the claim requires “determining an optimal time to empty a waste container, based on . . . waste hauler limitations.” Nadir also fails to disclose this limitation. The Office action cites paragraph 0022 of Nadir to show this limitation. That paragraph states:

The microprocessor of each compactor continuously calculates predicted trash weight and target time, such information is crucial for the fleet management unit to generate a pick-up schedule for all compactors. In one preferred embodiment, the target time is calculated based on the target weight reaching within 97-100% of the actual weight. In another preferred embodiment, the target time is calculated based on the target weight reaching its 97-100% of actual weight 24 hours in advance. The microprocessor is attached to and adapted to work with any kind of compactor used by the customers.

Nothing in this paragraph discloses determining an optimal time to empty a waste container **based on waste hauler limitations**. Predicted trash weight and target time are not waste hauler limitations. In the absence of any evidence or reasoning to show this limitation it is simply not disclosed in Nadir.

Third, the claim requires that the scheduling factors be stored before determining the optimal time to empty each waste container. The most relevant portion of paragraph 30 of Nadir states that “[t]he fleet management unit stores past and most recent data regarding target times.” Target times are not scheduling factors that include waste hauler limitations or customer preferences, as required by the claim. Nadir therefore does not disclose this limitation.

Applicant has shown that Nadir fails to disclose each limitation of claim 1. Claims 3-14 depend from claim 1 and are therefore not anticipated by Nadir. Claims 15, 24, and dependent claims include similar limitations that are not disclosed in Nadir. Applicant, therefore, respectfully requests allowance of all claims.

**II. Request for Relief from Errors**

As a *prima facie* rejection has not been established against Claims 1, 15, 24, 3, 4, 5, 8, 11, 14, 16, 25, 17, 18, 26, 19, 21, 28, 29, 30, 32 and 31, Applicant respectfully requests allowance of Claims 1, 3-11, and 13-32.

**CONCLUSION**

For the reasons presented above, Applicant respectfully requests relief from the Errors of Record. If the PTO deems that an interview is appropriate, Applicant would appreciate the opportunity for such an interview.

To the extent necessary, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0383 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

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